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CHARLES HOWARD, Esq;

Of GREYSTOCK,

A N D

Miss FRANCES HOWARD,

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The Family of NORFOLK, in ENGLAND.

Translated from the FRENCH.

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M E M O R I A L

F O R

Mr. and Miss *H O W A R D*, &c.

MR. and Miss *Howard*, and with them all the *English* nation, do by the good offices of the Ambassador, claim the Execution of the XIIIth article of the Treaty of *Utrecht*, and of the declaration of 1739, by both which the subjects of *Great Britain*, are allowed to succeed to the personal estates of their relations deceased in *France*; in the same manner as the subjects of the Most Christian King are authorized to inherit the like estates of their relations dying in *England*.

These laws have been executed in this particular, with the utmost exactness on the part of the *English*.

They can bring the most authentic proofs; and are able to maintain, by a number of examples which have happened even during the late war, that this execution has been totally in favour of the *French*; inasmuch that even when there was no precise law upon this point, the usage alone

which was practised in *England*, was sufficient to give this nation a right to exact from *France* a reciprocity which is founded on the right of nature and nations. It is by the favour of these different titles, that Mr. and Miss *Howard* presume to demand their part of a succession to the personal estate of their uncle, who died in *France*: And yet the Judges of the Chatelet, before whom their claim was at first carried, have not judged proper to admit it; and their sentence has been confirmed by an Arrêt,

It was difficult to conceive what could be the motives for such singular decisions; especially if it be considered that the succession in question was open before the late war.

Mr. and Miss *Howard* were in *England* at the time that they received the news, by a letter from their * attorney. If they can believe this letter (which shall be related hereafter) the judges were determined against them by two reasons, which were proposed by the King's Advocate to the Chatelet. The one, That the Treaty of *Utrecht*, on which they founded their claim, had not been registered in Parliament: The other, That the argument does not hold good of the *French* being admitted to cede to the personal estates of their relations who die in *England*; because that admission is not founded, SAY THEY, on the Treaty of *Utrecht*, but on the constitution of that kingdom, which admits to that kind of succession other foreigners, equally with *French*; whereas, according to the constitution of *France*, they cannot be allowed there but by virtue of naturalization, or of a particular treaty duly registered.

These reasons are what Mr. and Miss *Howard* undertake to dispute in this memorial; which they are willing to do with the greater confidence, as they have the happiness to bring their cause before that same throne,
from

* The late Mr. *Simon de Mofart*

from whence those laws proceeded which they claim ; and that they have as a security for the success of their demand, that Royal Word which is so solemnly engaged to allow them the same privileges in *France*, which the *French* enjoy in *England*.—But before they enter upon the detail, they beg leave to relate in this place the particular circumstances in which they now present themselves.

F A C T S.

MICHEL Trublet de la Herse, whose succession is now in question, died at *Paris* in the year 1755, intestate and without children. He was issue of the marriage of *Jacques Trublet*, of *French* origin, to *Helen Porter*, of the Kingdom of *Ireland*. She, after the death of her husband, married a second time *John Aylward*, an *Irishman*.

Of her first marriage with *Jacques Trublet*, *Helen Porter* had two children, *Michel Trublet*, whom we have already mentioned, and *Therése Trublet*, who was married to *M. de Nermond*, by whom she had *M. de Nermond*, counsellor to the Parliament of *Paris*, and a daughter named *Laurence*.

Of the second marriage with *John Aylward*, *Helen Porter* had two daughters, the eldest, named *Mary*, born in *France*, married *Charles Howard*, of *Greystock*, Esq; an *Englishman*, by whom she had the present Mr. and Miss *Howard*. The youngest, named *Anastasia*, likewise born in *France*, was married to Sir *Richard Moore*, Baronet, of *England*, by whom she had eight children, of which number six are actually in *France*, where they have been naturalized.

All the sisters of *Michel Trublet*, as well of the first as the second marriage, having died before him, the nearest relations he left at his death are
nephews

nephews and neices, all children of his sisters; who are in number twelve, and form three different classes of heirs.

In the first class, which consists of heirs naturally *French*, are included M. de Nermond, counsellor of the Parliament. and his sister.

In the second, which is that of heirs born in *England*, but naturalized in *France*, are Sir John Moore and his sisters;

And lastly, in the third class, which is that of heirs born in *England*, and not naturalized, are Mr. and Miss Howard. These claim a right to partake with the others, the succession to the personal estate of their uncle the Sieur Trublet; and this claim they found on the XIIIth article of the Treaty of *Utrecht*, and the King's Declaration in 1739; both which allow the subjects of *Great Britain*, tho' not naturalized in *France*, to inherit the personal estates of their relations who die in that kingdom, in the same manner as the *French* are allowed to enjoy the like privilege in *England*.

It was on this foundation, they grounded their first opposition to the seal which was put upon the effects of the Sieur Trublet: But the heirs of the first and second classes have united to contest this right; and they have demanded a suspension of this opposition, under pretence that Mr. and Miss Howard, being born in *England*, and not naturalized in *France*, could not succeed to a *French* relation, such as the Sieur Trublet.

Altho' this was sufficiently refuted by the words of the Treaty of *Utrecht*, and the Declaration of 1739, which makes no distinction in the reputed quality of relations, according to which they ought to succeed; nevertheless, to set it more effectually aside, the late Mr. Simon de Mosart, who was charged with the defence of Mr. and Miss Howard, thought
proper

proper to have it consulted in *England*, in order to know what was the custom there in this case. The case was at first stated in this manner :

If an *Englishman* born happens to die in *England*, without children and intestate, and having relations born and always residing in *France*, it is asked, Will they be entitled to partake the succession to the personal estate of the defunct, equally with his relations in the same degree of kindred, born and educated in *England*?

The answer given to this question was conceived in the following manner :

The council having considered, is of opinion that in consequence of the Statutes of Distribution, the relations born in *France*, have the same right to personal estate as those born in *England*.

This answer not having entirely satisfied the *French* advocate, in that it only spoke of the Statute of Distribution, and not of the Treaty of *Utrecht*, the execution of which was the principal debate in this cause ; he resumed the Enquiry, and desired that the *English* council would give his opinion upon the following question : It is ask'd,

How do they in *England* understand and execute the XIIIth Article of the Treaty of *Utrecht* ; and if in consequence of this Treaty, a *Frenchman* living in *France*, could succeed to an *Englishman*, his relation, dying in *England*, being equally related with the *English* heirs of the deceased residing in *England*? And what are the reasons upon which the *English* ground their admission of the *Frenchman* to succeed with the others?

The following is the next answer which was sent from *England* :

The

The usage of *England* is exactly agreeable to the XIIIth Article of the Treaty of *Utrecht*; the *French* relations being admitted to succeed equally with *English* relations in the same degree of kindred, to the personal estate of an intestate dying in *England*. The law of *England* does not, in this respect, make any distinction between foreigners and natural born subjects, and is conformed to the constitution of the Emperor *Frederick II.* Tit. I. Sect. 10. and is founded as well on natural justice as commercial reasons.

It is to be observed, that this clear and express opinion is signed by the Lord Chief Justice of *England*, by the King's Advocate and Attorney General, and consequently that it has all the marks of authority that any one can desire in matters of this kind.

To strengthen the authentic proofs arising from this opinion, to ascertain the manner of executing the Treaty of *Utrecht* in *England*, relative to the successions claimed by the *French*; Mr. and Miss *Howard* begged the interest of the Hon. Mr. *Yorke*, the *English* Ambassador to the States-General, in a memorial which he sent to the late M. *Rouillé*, minister for foreign affairs, wherein he represented to him the present question, as an affair which concerned the whole *English* nation in general. Mr. *Yorke* (these are the words of that memorial) putting his Excellency, M. *Rouillé*, in mind who he was, and assuring him of the sense he shall always retain of the many favours he was pleased to honour him with during his stay in *France*, takes the liberty to recommend to him the affair contained in the following note.

" The person interested in the succession of M. *Trublet*, is Miss
 " *Howard*, of the house of *Norfolk*, in *England*. They pretend, in
 " *France*, that she being a foreigner, has no right to claim her part
 " of the succession of M. *Trublet*. By the XIIIth article of the Treaty
 " of

" of *Utrecht*, and by a subsequent declaration, the *English* have acquired
 " a right of succession to personal estates: *France* has acquired the same
 " right by the same treaty, and have at all times enjoyed it, notwith-
 " standing the frequent interruptions which the *English* have experienced
 " in *France*. Mr. *Yorke* remembers to have spoke with M. *Le Marquis*
 " *de Puisfeulx*, in the beginning of the year 1749, and to have represented
 " to him, the consequences which a like procedure on our part would not
 " fail to produce in *England*. In consequence of which, it has already
 " pleased his Most Christian Majesty to give his orders for the observation
 " of these stipulations in favour of *England*. It is not imagined that the
 " present circumstances can make any alteration in this case; they have
 " not made the smallest in *England*; this affair was recommended to Mr.
 " *Yorke* by the Grand Chancellor; he hopes M. *Rouillé* would support
 " it by his good offices, and pardon the liberty he takes in soliciting him."

In consequence of this memorial, M. *Rouillé* caused the following an-
 swer to be made by the *French* Ambassador:

" M. *Rouillé* commands me to acquaint you, how much he is touched
 " with the sentiments you are pleased to express in the memorial which I
 " sent him at your desire; and how much he shall always be disposed to
 " shew you his zeal in every thing that concerns you: He adds, that he
 " will not fail to give you a proof of this, relatively to the succession
 " which Miss *Howard* thinks proper to claim."

In short, independently of the proofs which resulted from these pieces,
 Mr. and Miss *Howard* offered farther to justify by the registers of the courts
 of justice in *England*, a croud of examples of successions to personal estates,
 which have been recovered by *French* people of their *English* relations.
 They cited, among others, that of Mrs. *Caillion*, a *French* woman, actu-
 ally residing at the *Nouvelles Catholiques* in *Paris*, who having claimed,

during the last war, the personal estate of Mr. *John Catillion*, her nephew, born in *England*, and who died in *Ireland* in 1754, being a captain in one of his *Britanic Majesty's* regiments, was put into possession of the effects of this succession, by the Court of Doctor's Commons, to the prejudice of his other relations; and she has received, in consequence, 650*l.* sterling, and the remainder to be remitted to her immediately.

So many proofs accumulated, left no resource for the pretended argument of incapacity, which they had at first opposed to Mr. and Miss *Howard*: They waited patiently the success of their demand, till they understood with an extream surprize, that it had been rejected by a sentence of the Chatelet; not at all from the justice of the foundation of the pretended argument just mentioned, but from two other motives which had been proposed by the King's Advocate to the Chatelet.

This account was transmitted to them by M. *Simon de Mofart*, at the same time with the two motives which had determined the Judges. They think proper here to relate the contents of that letter, because it tends to fix the proper point of view in which this affair ought to be considered; and because it is the result of the conferences, which this advocate said he had upon the subject, with the ablest of his brethren: It was addressed to Miss *Howard*, and dated —.

M I S S,

YOUR cause against M. *Trublet de Nermond*, was tried on *Wednesday* the 22d of *March*. Your claim was rejected, and you condemned to pay costs. We took all possible pains to make it succeed, but two points have determined against you. The first, that the treaty of *Utrecht* which was the foundation of your plea, has not been registered in Parliament;

ment, and altho' treaties of peace are not commonly registered, and are nevertheless executed, yet as the very Treaty of *Utrecht*, concluded in the same year 1713, with the *Dutch*, was registered in 1742, the King's Advocate was of opinion that the treaty concluded with *England*, not having the same advantage of registration, ought not to produce the same effects; whence it followed that the *Dutch*, though foreigners in *France*, might succeed to a *Frenchman*, and that the *English* could not pretend to the same privilege. This argument, which all the reasonings in the world could not set aside, will be yet stronger before the parliament, since that tribunal acknowledges no laws but those which itself has registered, and consequently this Treaty of *Utrecht* will have no execution there.

The second point which has determined against you, is that they take it for granted here, that in *England*, all foreigners are allowed to inherit personal estates; this opinion is also confirmed by the consultations you have sent us. Now it is not the same in *France*, where foreigners have not any right, unless it be given them by some particular title, or by letters of naturalization. Having therefore no such letters, and the Treaty of *Utrecht*, which is the only title that could supply its place, not having been registered, you find yourself without any title in *France*, by the constitution of the kingdom. In this situation, I think I ought to inform you that there is no likelihood of your affairs succeeding better in parliament, than before the first Judges: Nor can any hopes be entertained of its success, but in the King's Council, where it must be introduced in the name of the *English* nation, and by their ambassador; who may be able to make it appear there, That the same privileges were by the Treaty of *Utrecht* intended to be given to the *English*, as the *French*, and other foreigners, enjoy in *England*; but circumstances do not permit the use of this method, at present, when the two Crowns are at war, and no *English* Ambassador at *Paris*. In this situation, it lies with you to determine, whether

ther you will have it carried into Parliament by an appeal from the sentence of the Chatelet. My opinion, and that of the best lawyers of this Country, whom I have consulted, is, that it would not succeed ; but it may be tried in council against the Arret which shall intervene : And as the not registering the Treaty of *Utrecht* will not be looked on with the same eye as in Parliament, we may more reasonably flatter ourselves with the hopes of success at that court ; besides, a peace may happen in the mean time, and then we may get the *English* ministers who shall be then in *France*, to solicit it.

But the process before the Parliament will cost more charges, which you will be obliged to pay : It is true, that if the council should happen to reverse the Arret, these expences will be returned. Be pleased to determine what you think proper to be done. I have regularly, in the mean time, protested against the sentence, in order to prevent the execution till I can hear from you. I have the honour to transmit you a copy of the sentence which was given by the Chatelet ; and beg you would be persuaded to believe that no part of your business has been neglected. But the default of registering the treaty, will always be an invincible obstacle in all the courts, except the King's Council. I have the honour to be, &c.

Signed

SIMON DE MOSART.

The affair being afterwards carried before the Parliament, an Arret passed which confirmed the sentence of the Chatelet.*

They would not have failed to attempt immediately likewise the last resource to which they were advised, if they had not been obliged to wait till the return of the peace should finally procure them the advantage of coming

* This is not exactly agreeable to the original ; which says, that Mr. and Miss *Howard* did not defend their cause before the Parliament. But the truth is as above.

coming in person, to carry their just claims against that Arret before the throne. They now come to improve this opportunity, of establishing the necessity there is of controuling the decisions of which they complain, by making it appear that they are not only contrary to the laws of the kingdom, but also to the publick right observed in all nations.

Every one must be sensible, by the detail of facts just related, of the importance of this suit, in its principles and in its consequences. But to treat it with all the order and precision which it requires, they think it proper to go back to the general principles upon which are founded the laws that ought to decide in this matter.

A R G U M E N T S.

ACCORDING to natural right, all men have the liberty to dispose of their goods ; and when they do not, these goods ought to go to their nearest heirs, as being understood most dear in the order of their affections.

This power of disposing of their goods, expressly or tacitly, being common to all those to whom they belong, it ought consequently to exert itself in all countries, without any distinction between the inhabitants of those countries and such as are not so.—This maxim, agreeable to divine right which has established a kind of fraternity among mankind, has served as a foundation for an infinity of laws and constitutions of Emperors ; and was, in a peculiar manner, adopted by the famous constitution of the Emperor *Frederic* the II^d. which begins with these words, OMNES PEREGRINI.

The kings of *France*, who have always signalized themselves among Christian Princes for acts of piety and justice, have never chosen to permit
that

that a maxim so wise should be violated in their dominions; and it is with this view that *Louis X.* by his declaration of the 15th of *December*, 1315, recorded in *Le Bret* and *Glopin*, confirmed the constitution of the Emperor *Frederic II.* and ordered it to be observed in his kingdom.

Hitherto neither in *France*, nor any where else, did they know any law that forbad foreigners the free disposal of their effects, and ordered the confiscation of them to the use of the sovereign of those states wherein they died, to the prejudice of their lawful heirs. It was, as the * authors we have just quoted remark, *Edward* the III^d. King of *England*, who first introduced this rigorous law in his dominions, by which foreigners are not allowed to inherit real estates.

Howbeit, the severity of this law soon obliged the other sovereigns, whose subjects had been the first victims, to make reprisals upon those of King *Edward*; and thus was introduced insensibly into some nations, and even *France* itself, that right hitherto unknown, called the *Right D'Aubaine*, by which the prince succeeds to all the foreigners that die in his dominions.

'Tis said only in some nations, because in effect as this right was contrary to the right of nature and of nations, and had no foundation but in the necessity of circumstances. It was only in those nations whose circumstances were the same, that this right was admitted. Again, there were many even of these, who after having adopted it, absolutely never exercised it. It is a remark of *Grotius*, in his learned treatise *De jure Belli & Pacis*, in these words: *Quod vero alicubi Externis Testamentum facere non conceditur, id non est jure gentium, sed ex jure proprio illius Civitatis: & ni fallor ab illâ veniens ætate quâ externi pro hostibus habebantur, itaque apud moratiores Populos exolevit.*

" Altho'

* *Bret* du Dom. *Le Bret* de la Souv. du Roi.

“ Altho’ in some places foreigners are not allowed to make a will,
 “ yet this is not by the law of nations, but from the particular constitu-
 “ tion of that state : And, if I mistake not, had its origin at a time when
 “ foreigners were considered as enemies; therefore among more civilized
 “ people it has worn out.”

This, however, is certain with respect to *France*, there was no other law but that of reprisal to introduce it in that kingdom. This is what we have attested to us by an infinity of authors of that nation, and even by those who seem the most favourable to this law. *Bacquet*, in his treatise *Du Droit D'Aubaine*, Part I. Chap. iii. allows that no precise law could be found that established this right in that kingdom; and that the most antient title made mention of is an old register of the Chamber of Accounts, conceived in these terms: “ *Item, du tems ancien les seigneurs des pays voisins, et non sujets du Roi notre seigneur, prenoient, et encore font mortes mains, et autres droits en leur terres, tant sur ceux de ce Royaume qu'autres, et pour cela a-t-on fait ainsi faire & continuer dans ce Royaume. — Ainsi la chose été continuée de tems en tems comme les cas sont venus.*”

“ Likewise, in ancient times, the Lords of the neighbouring countries, not subject to our Lord the King, have and do still exact mortmains and other rights in their territories, as well from the subjects of this kingdom as others; therefore they have done and continued the same in this kingdom.—Thus the thing has been continued from time to time, as occasions have happened.”

Bouchueil, in his *Bibliothèque du Droits François*, expresses himself in terms yet more precise. “ The *Droit d'Aubaine*, says this author, was introduced in *France*, because the neighbouring Princes and Lords exacted this right in their territories of the natives of the kingdom of *France*, wherefore it was reasonable that the king should exact a like right in this kingdom,

kingdom, of those who should come to settle there, and were not natives of the place."

But, as, according to these authors, it was the necessity of making reprisals, that gave an opening to this right in the kingdom and elsewhere: Likewise, by the same reason, since the neighbouring nations have consented to discontinue the practice, and mutually to allow their subjects the disposal of their goods; this mutuality has wrought the return of common right, or rather has only continued the exercise of the same, agreeable to that natural equity, which does not permit us to do by others what we would not have done to us.

Thus, of all the methods to get clear of the *Droit d'Aubaine*, the most ancient, as well as the most just and natural, has constantly been that of reciprocation; and for this reason it has also been the most universally received.

The Advocate-General, M. *Servin*, in the celebrated case of the Duke of Mantue, after having observed that the Law of *Aubaine* took place in France, against all foreigners, adds these remarkable words: *A l'exception des nations avec lesquelles il y a droit de succession mutuelle, quoique sujets de différens Princes.* "Except those nations with whom there is a mutual right of succession, altho' subjects of different Princes." *Dupuy* also makes the same remark in his treatise *Des Droits du Roi*, where the memoirs of the Duke of Mantue are related.

It cannot be doubted after such respectable authorities, that *Reciprocation* has always been, in France as well as every where else, one of the most efficacious motives to secure an exemption from the *Droit d'Aubaine*; and that this reciprocation once certain, is of no less force for making the exercise

ercise of this right cease, than naturalization, or express conventions settled by treaty.

It is also to be observed, that in all the Treaties wherein mention is made of an exemption from the *Droit d'Aubaine*, the Kings of *France* have been careful to take this reciprocation for the rule of that exemption. That which the *Swiss* enjoy in *France* has no other source, according to the declaration of *Louis XIII.* in *February, 1635.* "It being void of all appearances of justice and reason, concludes this Prince, that soldiers and others, who quit their native country for the service of a prince, or for the reciprocal advantage of trade, happening to die abroad, their wives, children and heirs whom they have left at home should be deprived of their successions, and lose at the same time their persons and effects; this would be an intolerable hardship, which our predecessors have always intended to dispense with."

This, which *France* had hitherto observed so religiously with all the neighbouring nations, it seems she had practised also in regard to *England*: That is to say, she had preserved to that nation the same extent of privileges allowed there to the *French*. Thus, as according to the particular usage established by *Edward III.* of which we have spoken above, foreigners were not allowed in *England* to succeed but to the personal estates of their relations who died there; they reciprocally did not admit the *English* who came to succeed in *France*, but only to this kind of goods. Such, without doubt, was the particular custom established between the two nations, when in 1713 their sovereigns judged proper to make it the matter of an express convention, by the XIIIth article of the Treaty of *Utrecht*, made the 11th of *April* in the same year. It is so true, that it was this same usage that served as a foundation for the disposition of that article, that in the treaty made at the same time with the *Dutch*, these

were declared totally exempt from the *Droit d'Aubaine* in *France*, with regard to all kinds of successions, whether real or personal, on condition that the *French* should enjoy the same exemption among them.*

“ It shall be entirely free (these are the words of the XIIIth article of
 “ the Treaty concluded with *England*) for merchants and others, being
 “ subjects of the *Queen of Great Britain*, or of the Most Christian King,
 “ to bequeath and give by will, or any other disposition, made in the
 “ time of sickness, or at any other time, preceeding or even at the point
 “ of death, their merchandises, effects, money, active debts, and all
 “ moveable goods which they have or ought to be possessed of at the time
 “ of their death, in the dominions or any other place belonging to the
 “ *Queen of Great Britain*, or the Most Christian King. Moreover
 “ whether they shall die after or without making a will, their lawful heirs,
 “ executors, or administrators, residing in one or other of these kingdoms,
 “ or coming from any other part, altho’ they should not be naturalized,
 “ shall receive freely and without dispute, and shall enter into possession
 “ of all the said goods and effects whatsoever, according to the laws of
 “ *Great Britain* and *France* respectively; provided, nevertheless, that the
 “ will, and right of succession to those who shall die without a will, be
 “ proved according to the laws, as well for the subjects of the *Queen of*
 “ *Great Britain*, as those of the Most Christian King, in the places
 “ where each person shall die, whether the same shall happen in *Great*
 “ *Britain* or *France*, any Laws, Statutes, Edicts, Customs, or *Droit*
 “ *d'Aubaine*, to the contrary notwithstanding.”

This article comprehends equally, it seems, both cases of succession, by will and without it. In the last, which is precisely the present case, the lawful heirs residing in one or other of the two kingdoms, are allowed

* See the XIVth article of the Treaty made with the *Dutch* at *Utrecht*, the 11th of *February*, 1713.

ed, altho' they should not be naturalized, to recover freely all the moveable effects whatsoever, of those who die in one or other of these kingdoms intestate, and that, it is said, according to the laws of *Great Britain* and *France* respectively. These last words then necessarily suppose two things, which serve to confirm the principles which we have before established; the one, that the right of succeeding to the personal estates of those who die in one or other of these two kingdoms, constituted already, before the Treaty of *Utrecht*, the common right of both nations; the other, that this right being founded on the *Reciprocity* observed in like cases between the two nations, it ought by no means to be regarded as a favour on the part of a sovereign, who has stipulated it in a treaty, as if he could at pleasure change or model it to the prejudice of the other, and without his consent; but as an act of justice, as an agreement by a binding record, of which the performance on the part of one of the contracting parties, necessarily obliges the other to the same observance.

It may be said in favour of *England*, that the intention of this article has been always executed there with the greatest exactness. Inasmuch that the circumstances of wars, which have happened since that time between the two powers, have not been able to make the least alteration: Of which the instance of Mrs. *Catillon*, which we have cited, and an infinity of others preserved in the registers of justice, will furnish sufficient proof.

But it seems that the *English* have not experienced the same ease on the part of the *French* heirs. It appears by the preamble of the declaration given in 1739, by the king so gloriously reigning, that many difficulties had arisen on the subject of the execution of this same XIIth article of the Treaty of *Utrecht*; and that his Majesty thought they could not better be removed, than by determining the extent of the privileges which the *English* should enjoy in *France* by those the *French* enjoyed in *England*. We think it right in this place to repeat the words of that Law, so much

the more important in the particular kind, as it is anterior to the opening of the succession in dispute ; and that the Prince meant it should serve for the future, as a rule for determining suits that should happen on the subject of successions to personal estates, claimed by the *English* in this kingdom.

“ *LOUIS*, by the Grace of God, King of *France* and *Navarre*, to all
 “ those to whom these Letters shall come, Greeting : Being informed of
 “ many difficulties which have arisen, on account of different inheritances
 “ left by the subjects of *Great Britain*, who come to reside in our domi-
 “ nions, and judging it necessary to remedy them, by allowing the subjects
 “ of *Great Britain*, who reside or shall come into our kingdom, to enjoy
 “ the same advantages for succeeding to personal estates, as our subjects
 “ enjoy in *Great Britain* ; and particularly since the Peace concluded at
 “ *Utrecht*, the 11th of *April*, 1713 : For these reasons, and others here-
 “ unto moving us, of our certain knowledge, full power and royal au-
 “ thority, We have ordered by these presents, signed with our hand, said
 “ appointed and ordained ; We say, appoint and ordain : We will, and it
 “ is our pleasure, that it shall be entirely free and allowed for commer-
 “ cial and other subjects of *Great Britain*, to bequeath or order, whether
 “ by will, declaration, or any other method they shall think proper, whe-
 “ ther in health or sickness, at any time whatsoever, even in the article of
 “ death, all their merchandizes, effects, money, active debts, and other
 “ moveable goods, which shall be found or ought to belong to them, at
 “ the time of their decease, in the countries or places of our domination,
 “ or coming from abroad, altho’ they should not be naturalized in our do-
 “ minions ; *They shall have a Right to receive and enjoy peaceably all the*
 “ *said goods, moveables and effects whatsoever, according to the laws of*
 “ *Great Britain* ; on Condition, nevertheless, that the subjects of *Great*
 “ *Britain* shall be obliged to prove agreeable to the laws, the lawfulness
 “ of

“ of the will, or their right to succeed to those who shall die intestate
 “ in the places of their decease.

“ *WE will that all suits moved, or to be moved on this subject, in regard*
 “ *to successions to personal estates, belonging to the subjects of Great Britain,*
 “ *may be judged in consequence of the present declaration: All Laws, Sta-*
 “ *tutes, Edicts, Customs, or Droit d'Aubaine to the contrary notwith-*
 “ *standing.*

“ And WE RECOMMEND it to our trusty and well beloved coun-
 “ sellors, the Members of our Court of Parliament at *Paris*, to cause
 “ these presents to be read, registered, and published, to keep and observe
 “ the contents, according to the form and tenor thereof: For such is our
 “ pleasure. Given at *Compiègne*, the 19th of *July*, 1739, and in the
 “ twenty-fourth year of our Reign.

“ Signed

“ *LOUIS.*”

And underneath *Amelot*, and sealed with the great Seal on yellow wax.

“ Registered; heard at the request of the King's Attorney-General,
 “ to be executed according to its form and tenour; and compared copies
 “ to be sent to the Bailiwicks and Seneschal's Jurisdictions, to be read,
 “ published and registered. To this the substitutes of the Attorney-Ge-
 “ neral are enjoined to pay a due attention, and to certify the court of the
 “ same within one month, pursuant to the Arret of this day. At *Paris*,
 “ in Parliament, the 4th of *August*, 1739, Signed *Dufranc.*”

It appears by this last law, that far from lessening the meaning of the
 XIIIth Article of the Treaty of *Utrecht*, which established the Reciproca-
 tion between the two nations, in regard to personal inheritances, it has
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only given it a particular extension in favour of the *English*; in that whereas the Treaty of *Utrecht* seemed to suppose, that this Reciprocation ought to be regulated by the respective laws of the two nations (*according to the Laws of Great Britain and France respectively*) this Declaration takes for the rule of the manner in which it should be executed in *France*, that in which it is executed in *England* (THEY SHALL HAVE A RIGHT TO RECEIVE AND ENJOY PEACEABLY ALL THE SAID GOODS, MOVEABLES AND EFFECTS, WHATSOEVER, ACCORDING TO THE LAWS OF GREAT BRITAIN :) So that it is only in regard to the manner of proving their kindred, or the lawfulness of the title by which they challenge the succession, that this Declaration means, as well as the Treaty of *Utrecht*, that they should have recourse to the laws of the kingdom; ON CONDITION, nevertheless, that the subjects of Great Britain shall be obliged to prove, according to the Laws, the lawfulness of the wills, or their rights to succeed those who die intestate, in the places of their decease.

It is in virtue, as well of this last law as of the XIIIth article of the Treaty of *Utrecht*, that Mr. and Miss *Howard* have claimed the succession to the personal estate of the *Sieur Trublet*, their uncle by the mother's side, who died in *France*. They wanted nothing, according to the words of these laws, in order to their being admitted to recover this personal inheritance, jointly with the other relations which the *Sieur Trublet* has left in *France*, but to prove, on the one part, the equality of their degree of kindred with the defunct, according to the laws of the Kingdom; and on the other, the usage which constantly prevails in *England*, of admitting reciprocally the *French*, to the personal inheritances of their relations who happen to die there.

Mr. and Miss *Howard* have been sufficiently clear as to both the one and the other of these proofs; neither have they met with any debate on these two points. The sole difficulty which was at first opposed to them, on the

the part of the heirs inhabiting the Kingdom [of *France*] was a pretence that the exemption from the *Aubaine*, granted to the *English* by the Treaty of *Utrecht*, had no place but in regard to the personal succession of their *English* relations who die in *France*, and not at all when the relations were originally *French*, such as the *Sieur Trublet*.

It is impossible to guess upon what such a distinction can be founded, which is not to be found in the Treaty itself, which they pretend to look upon as the source of the exemption which the *English* enjoy in *France*; and which has so much less presumption in its favour, that it tends absolutely to destroy the reciprocation which is the basis of that exemption itself, as appears by these collective words: *Suivant les Loix de la Grande Bretagne, et de la France respectivement.* "According to the Laws of *Great Britain* and of *France* respectively." But besides, not only the Treaty of *Utrecht* makes no reserve, relative to the quality of the relations to whom the *English* can succeed; but when, even since this Treaty there could arise any doubt, any difficulty on this subject, that difficulty, must necessarily be of the number of those which his Majesty intended to put an end to by his declaration of 1739, in which he ordains, that they shall for the future refer to the Laws of *Great Britain* on this point. Thus, as it is demonstrated elsewhere, as well by authentic opinions, as by the recent instance of *Dame de Catillion*, which have been before related, that the *French* do constantly enjoy in *England*, the right to recover the personal estates of their relations who die there, even notwithstanding that these should be of *English* origin. There is no disputing with Mr. and Miss *Howard* the right of claiming the personal estate of the *Sieur Trublet*, their uncle, altho' he was originally a *Frenchman*.

In effect, by this declaration, as well as by the Treaty of *Utrecht*, the Sovereigns proposed to themselves no other end but that of removing the defect of peregrinity, which hindered their subjects from coming to succeed

ceed reciprocally in their countries, to the personal estates of their relations who died there. Now this defect, which was the only obstacle to the right which their quality of relations gave them, being once removed, this primitive right which they acquired by the laws of nature and of blood, has ever since resumed its full force: So that the *English* relation is found by that on a footing with the *French*, whose degree of relation is equal; these last qualities not being able either to add or diminish any part of that given them by their consanguinity, of which they are only simple accessories.

If the King's intention, in his Declaration of 1739, had been to restrain the exemption of the *English*, to the single case where the relation whose personal inheritance they claim should himself be *English*, his Majesty would not have failed to mention it in a law, by which he intended to put an end to all the difficulties that could happen in time coming; and as he has not made mention of it, it must necessarily be concluded that he intended to leave these matters to the disposal of common right, according to which the successions to an intestate should be regulated by the proximity of their degree of kindred; or rather he thought that it should be referred to the intention of those who die in his dominions, who having it in their power to dispose of their goods to the prejudice of their *English* relations, and not doing so, are understood by that to intend that their goods belong to those, as well as to their other relations in equal degree, residing in the kingdom.

But why dwell any longer on refuting an argument of which none can help perceiving the vanity? If it be true, as it cannot be doubted, from the letter of Mr. and Miss *Howard's* defensor, that sentence was passed from two other motives, which were proposed by the King's Advocate to the Chatelet; the one, taken from the default of registering the Treaty of
Utrecht;

Utrecht ; the other, from the pretended difference between the usages of *England* and those of *France*, relative to the exemption from the *Aubaine* : It only remains for the intire justification of Mr. and Miss *Howard's* right, to make it appear that these last arguments, which have served as motives for the sentence and the Arret which has confirmed it, are not less frivolous and illusory than the preceding.

As to the first reason, which they pretend to strengthen by the example of the *Dutch*, we have before set aside the argument they would draw from thence in our case, by observing that by the Treaty of *Utrecht*, the *Dutch* are declared intirely exempt from the *Aubaine* in *France*, even with respect to real estates : A circumstance which might have engaged them to take particular precautions, for the better ascertaining the effect of this privilege, which the *English* have not.

Besides, without diving into the reasons that might determine that nation to have recourse to the formality of registration ; without entering any farther into the discussion of the particular prerogatives which the Parliaments of *France* may have on that account, it is sufficient for Mr. and Miss *Howard*, in order entirely to set aside the argument which is pretended to result from the want of this formality, to observe, on the one part, that even by the confession of the King's-Advocate, who first proposed this argument, it is certain, that in common, *Treaties do not fail of being executed, tho' they are not registered* : And on the other, that supposing even this formality absolutely indispensible, the want of it cannot be alledged against them, since it is exactly made up by the Declaration of 1739, which has confirmed the Treaty of *Utrecht* on this head. Mr. and Miss *Howard* could confine themselves the more willingly to this last law, because it had for its object the putting an end to all the difficulties which had arisen at that time, in regard to the execution of the XIIIth article of the Treaty of *Utrecht* ; that it is, by this very Law, his Majesty intends all

suits which should afterwards happen on this subject, should be tried; and in a word, because its intention is to them more favourable, than the XIIIth article of the Treaty of *Utrecht*, in this, that it intends the exemption of *Aubaine*, in regard to personal estate, should be regulated by the manner in which it is done in *England*; and that they do not consult the laws of *France*, but only in regard to the manner of proving their consanguinity, or the lawfulness of the title which calls the *English* to the succession of their relations dying in this kingdom.

This last observation serves to confute before-hand the other pretended argument, by which it is supposed that the matter cannot be tried according to the Laws of *England*, which call equally all foreigners to inherit the personal estates of their relations; whereas by the constitution of *France*, no foreigner is, SAY THEY, allowed to recover successions, but in virtue of naturalization, or a particular Treaty duly registered.

We have just seen, that in consequence of the registration of the Declaration of 1739, Mr. and Miss *Howard* will indisputably be in a condition to recover the succession in question, even setting out upon their adversaries own system; and that with so much the more reason, that (as has been elsewhere observed,) that very Declaration intends they should refer to the Laws of *England*, for the manner in which the Treaty of *Utrecht* ought to be executed, in regard to the exemption from the *Aubaine*, which the *English* should enjoy in *France*.

But besides, such is the advantage of Mr. and Miss *Howard* in this case, that they are moreover in a condition to make it appear by the principles already established, that the pretended difference between the common right of *England* and that of *France* on this point, is absolutely chimerical; since it is certain from the testimonies of *French* authors, and even of those who are the most favourable to the *Droit d'Aubaine*, that both in
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one and the other of these kingdoms, they at first adopted the constitution of *Frederick* the II^d. which invites, indiscriminately, all foreigners to the successions of their relations, in whatever places they die ; but the King of *England*, *Edward* III. having first presumed to confine the execution of that Law to personal estates only, they found the necessity of practising the same in *France*, against the *English* who came thither to recover successions ; that in fine, this which was at first practised between the two nations on the sole footing of reprisal, is become the object of an express convention in the particular Treaty which was concluded at *Utrecht*, between the Sovereigns of the two nations. From hence it follows, that it is without the least foundation, they imagine *France* to have, in this respect, any common-right distinct from that of *England* ; the only law peculiar to it on this account is the Declaration of 1739 : But so very far is this last law from having derogated from the Treaty of *Utrecht*, relative to the privileges granted to the *English*, that it has confirmed them with greater extent, in adopting the laws of that very nation, for regulating the execution of them in this kingdom.

It appears then that whether we look back to the laws anterior to the Treaty of *Utrecht*, or consult those which are posterior to that Treaty, the *English* are equally authorised to recover the personal successions of their relations dying in *France*, and consequently that the part which Mr. and Miss *Howard* claim in that of the *Sieur Trublet*, their uncle, cannot be contested with them.

This succession was open before the late war. They have made it appear elsewhere, by the proofs and examples they have recited, that the Reciprocity which served as a foundation for those laws, has been exactly observed even then on the part of *England*. They could even add that this Reciprocity is totally advantageous to the *French*, and that it is founded on the benefit of commerce. How then, with so many titles,
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can they fear becoming the first victims of the infraction of these laws, under the reign of a MONARCH equally just and magnanimous?

THE UNDERWRITTEN COUNCIL is of opinion, That the arguments expressed in the above Memorial are founded on the true principles of public right; and that by reason of the proofs which Mr. and Miss Howard report, of the constant execution of the Treaty of *Utrecht* in *England*, relative to the personal successions which are there claimed by the *French*, there is reason for adjudging to them the part for which they sue, in the personal succession of the *Sieur Trublet*, their uncle, conformable to the disposition of that treaty itself, and the declaration of 1739, the intention of which is that they should enjoy the same privileges in *France*, as the *French* do in *England*.

Consulted at Paris, this 16th of December, 1763.

MUYART DE VOUGLANS.

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